

¹ The Board notes that it has jurisdiction over the Office's September 16, 2004 schedule award decision. However, appellant's representative noted that appellant does not contest the Office's denial of his request for a schedule award. Therefore, the Board will not review that decision in this appeal.

FACTUAL HISTORY

On June 30, 2003 appellant, then a 63-year-old shipfitter, filed an occupational disease claim alleging loss of hearing due to noise exposure in the course of his federal employment.

In support of his claim, appellant submitted numerous documents, including personnel records and a chronology of medical care with supporting audiogram reports from 1960 through 2004. Appellant did not submit a narrative medical report from a treating physician relating to his hearing loss condition.

On April 21, 2004 appellant filed a request for a schedule award.

On May 27, 2004 the Office advised appellant that the evidence he had submitted was insufficient to establish his claim. The Office referred appellant, together with a statement of accepted facts, to Dr. Meredith Pang, a Board-certified otolaryngologist, to determine the nature and extent of appellant's hearing loss and its relationship to his federal employment.

In a report dated July 15, 2004, Dr. Pang opined that appellant had a severe high frequency sensorineural (inner ear -- nerve type) hearing loss, as revealed by an audiogram performed in her office. She further opined that his hearing loss was related to or aggravated by hazardous employment noise exposure and that the loss was stable and ratable. Dr. Pang determined that appellant's speech reception thresholds were 20 decibels in both ears (normal = 0-20 decibels) and that speech discrimination scores (which reflect word understanding at high frequencies) were 92 percent in the right ear and 80 percent in the left ear (normal = 90 to 100 percent). She further indicated that intermittence audiometry revealed type A tympanograms and that stapedius reflex thresholds were elicitable, with no stapedius reflex delay at 1,000 hertz. She concluded that appellant had a hearing loss of 1.9 percent in his right ear and 9.4 percent in his left ear, resulting in a binaural hearing loss of 3.1 percent.

On July 29, 2004 the Office accepted appellant's claim for bilateral hearing loss.

On August 20, 2004 an Office medical adviser reviewed Dr. Pang's July 15, 2004 report and audiogram results and concurred that appellant's hearing loss was causally related to noise exposure at work. He noted that the audiogram performed by Dr. Pang showed that appellant had bilateral high frequency sensorineural hearing loss. However, he found that appellant had a zero percent binaural sensorineural hearing loss for schedule award purposes, based on a 1990 audiogram performed at the time of appellant's retirement. He found that the date of maximum medical improvement was January 4, 1990. The Office medical adviser checked the block marked "no" in response to the question as to whether a hearing aid was authorized, adding "at the time of retirement in 1990."

By decision dated September 16, 2004, the Office found that he did not sustain a ratable hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). The Office determined that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act.

By letter dated September 22, 2004, appellant's representative questioned why the Office had not addressed the issue of medical benefits, contending that, even if appellant was not entitled to a schedule award, he should be entitled to medical benefits, including hearing aids.

By decision dated February 7, 2005, the Office determined that appellant was not entitled to hearing aids, based on the September 16, 2004 determination by the Office that appellant had a zero percent binaural loss of hearing for schedule award purposes.

On appeal, appellant's representative stated that appellant "does not question the finding that his hearing loss was not large enough to warrant payment of a schedule award." He argued, however, that because his claim was accepted for bilateral hearing loss, he should be entitled to medical benefits arising out of his injury.

LEGAL PRECEDENT

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.² The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.³

ANALYSIS

The Board finds that appellant is not entitled to hearing aids at the present time based on the evidence of record. Dr. Pang opined that appellant sustained a severe employment-related high frequency bilateral sensorineural hearing loss. However, she did not address the issue of hearing aids. After having reviewed Dr. Pang's report and accompanying audiogram, the Office medical adviser checked the block marked "no" in response to the question as to whether a hearing aid was authorized. There is no medical evidence of record recommending that appellant be provided with hearing aids or any other medical treatment for his employment-related hearing loss. Therefore, the Board finds that, under these circumstances, the Office acted within its discretion under section 8103(a) to deny authorization for hearing aids.

The Board notes that the Office's denial of appellant's request for hearing aids seemed to be based on its determination that appellant had a zero percent binaural loss of hearing for schedule award purposes. The Office evaluates permanent impairment resulting from industrial

² 5 U.S.C. § 8103(a).

³ *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

hearing loss in accordance with the standards contained in A.M.A., *Guides* (5th ed. 2001).⁴ On the other hand, the criterion used for determining whether or not a claimant is entitled to hearing aids is outlined in section 8103(a) of the Act, which provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.⁵ Therefore, while appellant may not have a ratable hearing loss for schedule award purposes, he may very well be entitled to hearing aids, provided that he meets the requirements of section 8103(a). Appellant's claim was accepted for bilateral hearing loss. Accordingly, he is entitled to medical benefits until such time as those benefits are terminated.⁶ However, appellant has failed to submit any evidence whatsoever from a qualified physician establishing that he requires hearing aids and therefore is not entitled to hearing aids at this time. Appellant may file an appropriate claim for hearing aids prescribed or recommended by a qualified physician for consideration by the Office under section 8103(a) of the Act.

CONCLUSION

The Board finds that appellant is not entitled to hearing aids based on the evidence of record.

⁴ A.M.A., *Guides* at 250. Using the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. *Id.*

⁵ 5 U.S.C. § 8103(a).

⁶ Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment. *See Barry Neutuch*, 54 ECAB 313 2003. The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background. *See Del K. Rykert*, 40 ECAB 284 (1988). Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment. *See Mary A. Lowe*, 52 ECAB 223 (2001).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed as amended.

Issued: January 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board